

**International Brotherhood of Electrical Workers,
Local Union 103 and Drew Electric Co., Inc.**
Cases 1-CB-6704 and 1-RC-18931

September 30, 1993

**DECISION AND ORDER AND
CERTIFICATION OF REPRESENTATIVE**

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The issue in this case is whether Respondent Union made an unlawful promise of benefits in order to influence the results of a Board election.

On October 9, 1987, the Employer, Drew Electric Co., Inc., filed timely objections to an election held on October 2, 1987.¹ In its objections, the Employer alleged that, during the preelection period, the Respondent promised employees higher wages and benefits and jobs with other employers in order to secure their votes. On October 27, 1987, the Employer filed an unfair labor practice charge alleging that, by conduct identical to the conduct alleged in the objections, the Respondent violated Section 8(b)(1)(A) of the Act. On January 11, 1988, the Acting Regional Director issued a Report on Objections recommending that the objections be consolidated for hearing with the unfair labor practice charge. On January 25, 1988, the Regional Director issued an order consolidating cases, complaint and notice of hearing.² Thereafter, the Respondent filed a timely answer admitting in part and denying in part the allegations in the complaint.

On December 7, 1992, the Respondent, the General Counsel, and the Employer filed a stipulation of facts. The parties agree that the charge, complaint, answer, and stipulation, with attached exhibits, shall constitute the entire record in this case and that no oral testimony is necessary or desired by any of the parties. The parties further agree that they entered into the stipulation for the purpose of the above-entitled matters only. The parties waive a hearing before an administrative law judge, the making of findings of fact and conclusions of law by an administrative law judge, and agree to submit this case directly to the Board for findings of fact, conclusions of law, and the issuance of a Decision and Order.

On February 5, 1992, the Deputy Executive Secretary, by direction of the Board, issued an order approving the stipulation, and transferring the proceeding

to the Board. The Respondent, the General Counsel, and the Employer submitted briefs with the stipulation.

On the entire record and briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, Drew Electric Co., Inc., is an electrical subcontractor in the construction industry with a facility in Dorchester, Massachusetts. During the 12 months preceding the issuance of the complaint, the Employer, in the course and conduct of its business, purchased and received at its Dorchester facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts.

Based on the stipulation of the parties, we find that Drew Electric Co., Inc. is an employer in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, based on the stipulation, we find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED OBJECTIONABLE CONDUCT AND
UNFAIR LABOR PRACTICE**

A. Facts

The Respondent has two standard construction contracts: a construction contract or "inside agreement" and a residential contract. The residential contract provides wage rates that are substantially lower than those set forth in the inside agreement. In order to work under, and be eligible for, the wages and benefits set forth in the inside agreement, an employee must hold an "A" card issued by the Respondent and must apply, through the Respondent's hiring hall, for work covered by the inside agreement. In order to work under the residential contract, an employee must hold either an "A" card or an "R" card and must apply, through the hiring hall, for work covered by the residential contract.

Individuals are eligible for referral through the hiring halls without regard to union or nonunion affiliation.³ When a person registers for employment through the hiring hall, he/she must choose whether to register under the inside agreement or the residential contract. An individual cannot be registered on the inside agreement referral list if he/she is also registered for work on the residential contract referral list. Further, an individual holding an "R" card cannot apply for work covered by the inside agreement. At all material times, there was no waiting list for positions under

¹ On July 28, 1987, the Respondent filed a petition to represent certain employees of Drew Electric Co. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 17 for and 10 against the Respondent, with 3 challenged ballots, an insufficient number to affect the results.

² On April 15, 1992, the Employer withdrew Objections 1 and 4, which respectively alleged impermissible electioneering and promise of higher wage rates to apprentice employees in exchange for votes.

³ However, at all material times, all persons performing work under these agreements were union members.

either contract; individuals, upon appropriate application, would be referred within 24 hours.

During the period from July 28, 1987, until October 2, 1987, the Respondent held approximately five meetings with Drew employees at the union hall. Between 12 and 20 employees attended each meeting. During the meetings, the Respondent's business agent, Donn Berry, told the employees that the Union had two referral classifications in construction work: "A" card holders who are eligible for referral under the inside agreement, and "R" card holders who are eligible for referral under the residential contract. Berry told the Drew employees that Drew performed work of the kind covered by the inside agreement and that, if the Respondent won the election, the employees in the bargaining unit would immediately receive "A" cards, rather than "R" cards. Berry also told the employees that if the Respondent won the election, the Respondent would want them to stay with Drew until after collective-bargaining negotiations were completed. Berry stated that if Drew agreed to the inside agreement, the Respondent wanted the employees to stay with Drew at least long enough to finish jobs contracted for prior to the date of the Employer's execution of the inside agreement. Berry then told employees that nothing in the Respondent's rules and regulations prevented a holder of an "A" card from utilizing the Respondent's hiring hall for referrals to obtain employment with over 200 companies which were similar to Drew and which were signatories to the inside agreement. Because there were so many signatory employers, Berry told employees, there were many jobs for electricians in the Boston area, and "A" card holders were being sent to jobs covered by the inside agreement within 24 hours of registering with the hiring hall. Finally, Berry told employees that individuals who came in "off the street" and applied for work would be given "A" cards or "R" cards based on their work experience, qualifications, and job availability.⁴ According to Berry, only those individuals with superior qualifications and work experience received "A" cards; otherwise they received "R" cards.⁵

After the election, the Respondent offered "A" cards to all bargaining unit employees. Of the 30 employees offered such status, 29 accepted the offer and they received "A" cards. Berry asked those 29 em-

ployees to continue working for Drew until after the objections to the election were resolved. However, he also told them that they were free to use the Respondent's hiring hall.

B. Contentions of the Parties

The General Counsel contends that the Respondent's promise of immediate "A" cards to the unit employees was an unlawful inducement to employees to support it in a Board election, in violation of Section 8(b)(1)(A) of the Act. It is also contended that this conduct warrants setting aside the election. The General Counsel argues that immediate receipt of an "A" card was a special benefit offered to these unit employees, providing them with entitlement to high paying jobs. According to the General Counsel, there was no test of qualifications, no requirement of experience, and no waiting period. The Employer, citing the Board's decision in *Alyeska Pipeline Service Co.*, 261 NLRB 125 (1982), argues that the Respondent had the power to effectuate its promise of a special benefit and that its promise had a tendency to influence the election results.

The Respondent argues that Berry was merely informing Drew employees of what their rights would be under the Respondent's referral procedure and that the determination that employees in the bargaining unit would receive "A" cards was based on the fact that the type of work performed by Drew was covered by the inside agreement. The Respondent further argues that receipt of an "A" card was not contingent upon an individual employee's promise to support the Respondent. Finally, the Respondent argues that, in *Alyeska*, unlike the present case, the union told employees that they would be given favorable treatment in referral and the union controlled all of the construction work in the area.

C. Discussion and Conclusion

In essence, the General Counsel and the Employer are contending that the employees were promised a benefit to which they were not otherwise entitled, namely "A" cards, if they voted for the Respondent. To establish this violation, the General Counsel must establish that the Employer's employees were not otherwise qualified to receive "A" cards. The record here fails to establish this necessary element. Indeed, the record affirmatively suggests the contrary. The parties stipulated that the Employer performs the type of work covered under the inside agreement. It is reasonable to infer that the Employer's employees have the necessary skills to qualify for "A" cards.

Nor would the employees reasonably understand that a vote for Respondent was necessary to secure the "A" card. As Berry explained to the employees, a person "off the street," with comparable experience

⁴The stipulation suggests that membership in the Respondent is a prerequisite for any type of card. However, as noted supra, the stipulation also states that referrals are "without regard to union or non-union affiliation." We need not resolve this apparent conflict. The General Counsel and the Employer do not contend that this case involves "membership" discrimination. They contend only that this case involves an alleged promise of preferential treatment based on the votes of unit employees.

⁵Berry told employees that those individuals receiving "R" cards were entitled, after 3 or more years, to apply for an upgrade in classification to an "A" card.

and qualifications, could secure an “A” card. Under these circumstances, we find that the General Counsel failed to establish that the promise of immediate “A” cards to unit employees either violated Section 8(b)(1)(A) or constituted objectionable conduct which warranted setting aside the election.⁶ Accordingly, we

⁶ *Alyeska*, supra, cited by the Employer, is inapposite. That case involved a union’s promise that members would be preferred over nonmembers. As discussed above, the instant case involves no such allegation.

dismiss the complaint and certify the Respondent as the employees’ bargaining representative.

ORDER

The complaint is dismissed.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Brotherhood of Electrical Workers, Local Union 103, and that it is the exclusive collective-bargaining representative of the unit employees.